

**EXHIBIT 1**



US00RE36142E

**United States Patent** [19]  
**Steed et al.**

[11] B

Patent Number: **Re. 36,142**[45] **Reissued** Date of Patent: **Mar. 16, 1999**

[54] **METHOD OF PACKAGING RESILIENTLY  
 COMPRESSIBLE ARTICLES**

3,585,700 6/1971 Jansson ..... 53/436

3,611,524 10/1971 Broyles ..... 53/432

4,234,983 11/1980 Stumpf .

4,575,990 3/1986 von Bismarck ..... 53/469

4,854,023 8/1989 Stumpf ..... 53/114

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 Gladney, Fairburn, both of Ga.**

[73] Assignee: **Shumons Company, Atlanta, Ga.**

[21] Appl. No.: **919,655**

[22] Filed: **Aug. 28, 1997**

#### Related U.S. Patent Documents

Reissue of:

[64] Patent No.: **5,622,030**

Issued: **Apr. 22, 1997**

Appl. No.: **694,803**

Filed: **Aug. 9, 1996**

U.S. Applications:

[63] Continuation of Ser. No. 416,065, Apr. 4, 1995, abandoned.

[51] Int. Cl.<sup>6</sup> ..... **B65B 1/24**

[52] U.S. Cl. .... **53/436; 53/524; 53/528;  
 53/114**

[58] Field of Search ..... **53/432, 436, 469,  
 53/399, 114, 524, 528**

[56] **References Cited**

#### U.S. PATENT DOCUMENTS

1,861,429 5/1932 Schneider et al. .... 53/114

*Primary Examiner*—James F. Coan

*Assistant Examiner*—Gene L. Kim

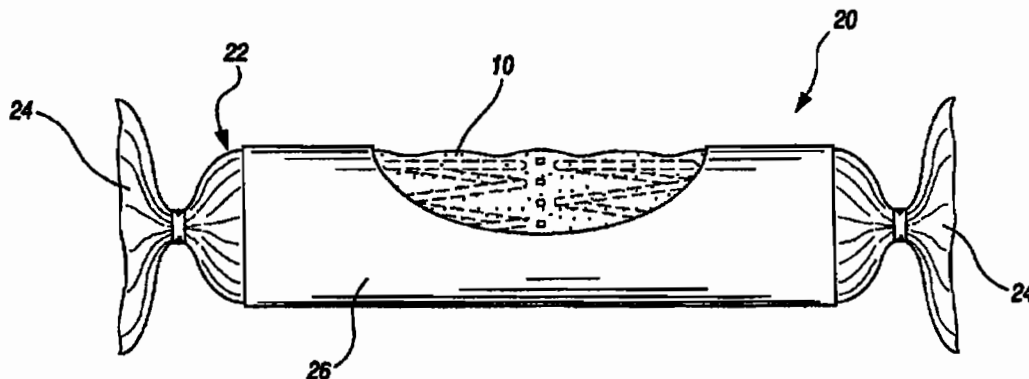
*Attorney, Agent, or Firm*—Jones, Day, Reavis & Pogue

[57]

#### ABSTRACT

A method of packaging a resiliently compressible article comprises the steps of inserting the article into a tube of deformable material such that excess material is provided at the ends of the tube. A first end of the tube is then sealed closed. Air is then evacuated from the tube through the second end thereby deforming the tube around the article and causing the article to compress. While a vacuum is maintained in the tube, the second end of the tube is sealed closed. A containment sleeve is fitted over the sealed tube to maintain the article in a compressed state. When the article is unpackaged, the containment sleeve is severed and the tube is allowed to expand in a gradual controlled fashion by the bleeding of air back into the tube.

**9 Claims, 3 Drawing Sheets**

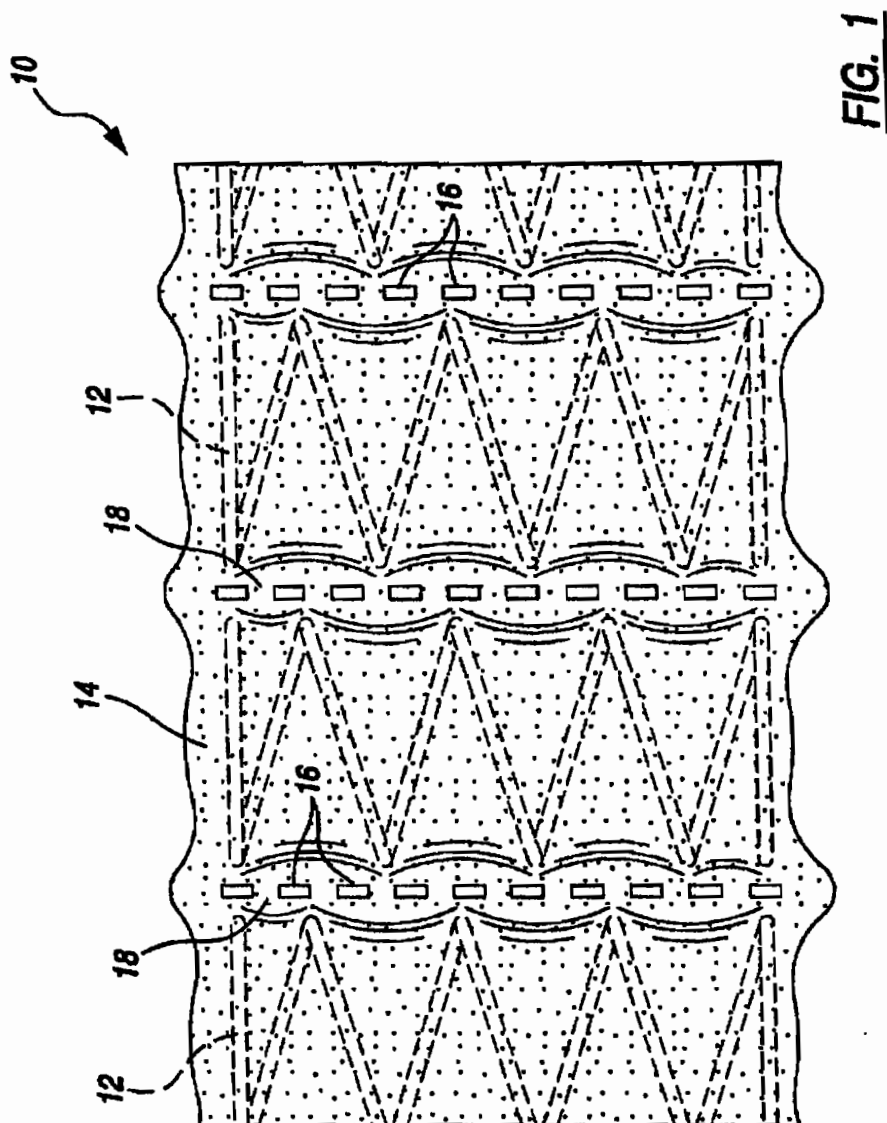


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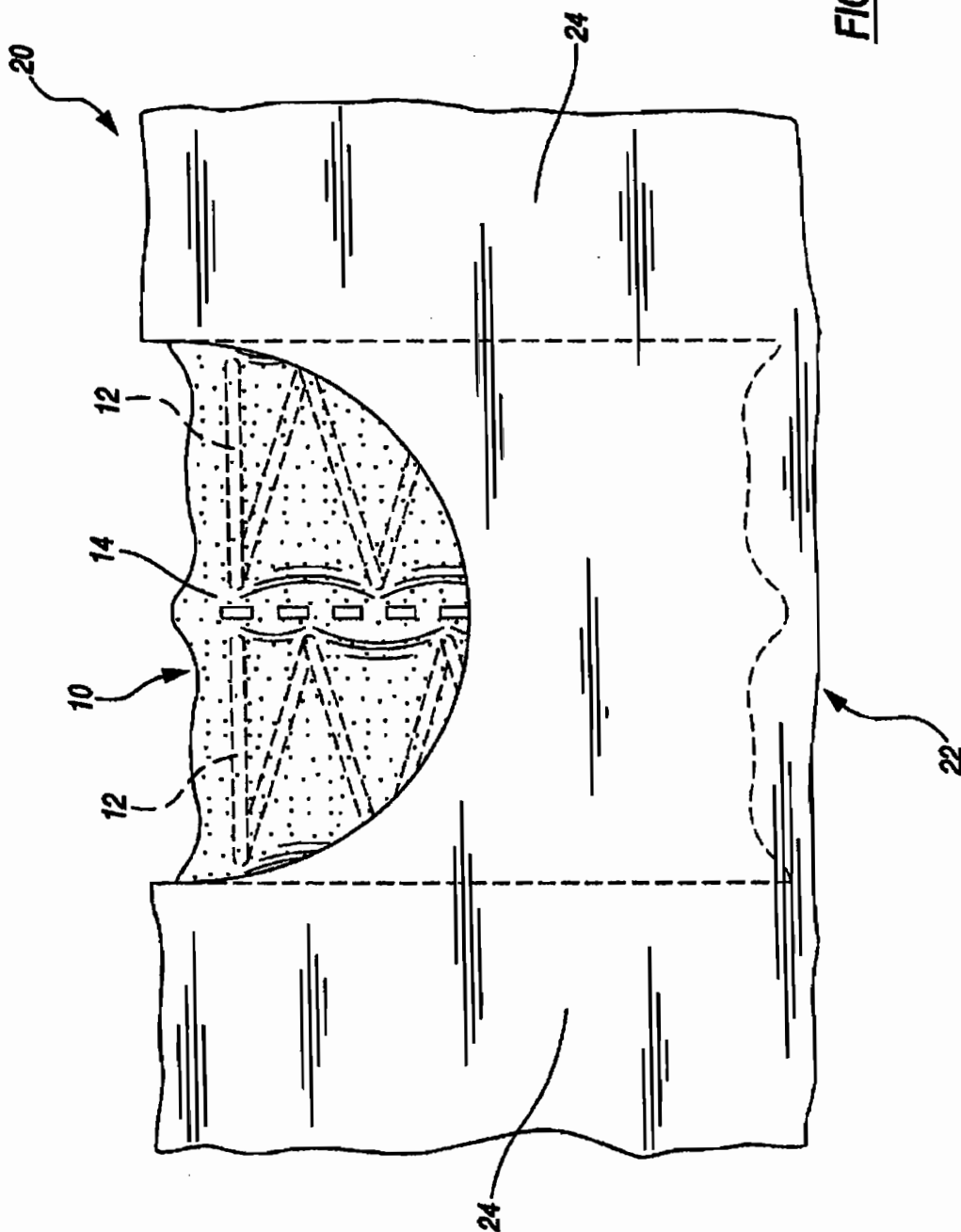


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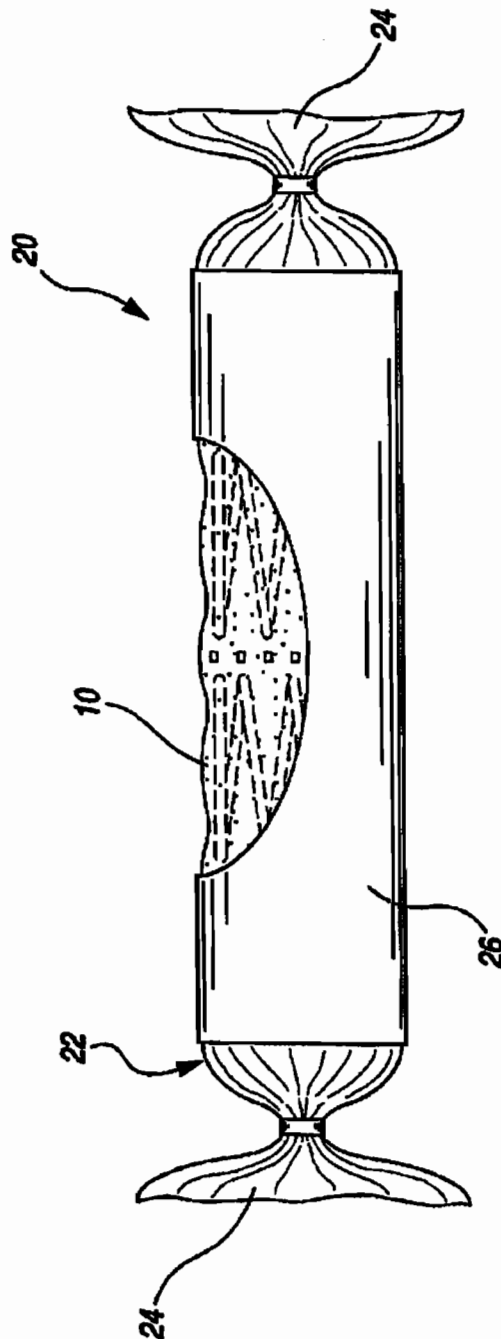


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**FIG. 3**

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## METHOD OF PACKAGING RESILIENTLY COMPRESSIBLE ARTICLES

Matter enclosed in heavy brackets [ ] appears in the original patent but forms no part of this reissue specification; matter printed in *italics* indicates the additions made by reissue.

This application is a reissue application of Ser. No. 08/694,803 filed on Aug. 9, 1996 now U.S. Pat. No. 5,622,030 which is a continuation of application Ser. No. 08/416,065 filed on Apr. 4, 1995 abandoned.

### BACKGROUND OF THE INVENTION

#### 1. Field of the Invention

The present invention relates generally to a method of packaging resiliently compressible articles and, more particularly, to a method wherein compressible articles can be conveniently packaged for shipment in a compressed state and can be unpackaged at their destination in a controlled manner.

#### 2. Description of the Prior Art

Many articles of manufacture are lightweight and bulky and cannot be delivered to the consumer without an undesirably high cost associated with shipment. Often these articles are also inexpensive to manufacture but their cost to the consumer necessarily reflects a disproportionately high component of shipping charges, thereby adversely affecting the perceived value of the article to the consumer. One such article whose cost of shipment is undesirably high as compared to its manufactured cost is an innerspring component of a typical mattress, cushion or the like.

In standard mattress construction, for example, an innerspring assembly is used comprising an arrangement of closely packed coil springs. One form of innerspring construction which has proved to be highly successful is known as the Marshall construction. In this construction, individual coil springs are encapsulated in discrete pockets of fabric material with the pockets of fabric material formed together to create strings of coils. These strings of coils are then arranged in an array with the coil springs all oriented parallel to one another, thereby forming an innerspring assembly. An example of such construction is disclosed in U.S. Pat. No. 4,234,983, issued to Stumpf and assigned to the common assignee herein, the disclosure of which is expressly incorporated hereby by reference.

In order to construct a mattress assembly which provides adequate support yet is comfortable to the user, the springs used in the foregoing construction characteristically have such few coil turns and have such relatively weak compressive strength that they can be readily compressed to a size on the order of one-tenth their naturally expanded size. Accordingly, strings of coils of the foregoing type are lightweight and considerably bulky.

Recently, a new construction of mattress has been developed which is capable of being disassembled to knocked down form for convenient shipment to customers or retail outlets. Such a knock down mattress is disclosed in co-pending U.S. patent application Ser. No. 08/398,227 filed Mar. 3, 1995, assigned to the common assignee herein. This construction comprises four bolsters each having a generally rectangular cross section and dimensioned to be arranged in a mattress outline. The bolsters are retained within a shell having a bottom panel, perimeter side panels and a zippered cover panel. Each bolster comprises a fabric casing which contains lengths of pocketed spring coils.

The aforesaid mattress assembly, because of its knock down construction, can be shipped in a highly economical

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manner by comparison to conventional unitary mattress structures. The components of this mattress can be assembled into packages of very manageable size for shipment. However, it is desirable to provide a packaging method which further reduces the size of the packaging. To this end, vacuum packaging of the coil springs may be employed wherein the strings of coils are compressed within an initially evacuated plastic tube and retained in a compressed state by a containment sleeve fitted over the tube as the vacuum source is removed.

Because conventional springs of the pocketed coil type can be compressed significantly from their naturally extended state, substantial reductions in size of packaging for such springs can be achieved by vacuum packaging methods. However, a disadvantage of using known vacuum packaging methods to provide a compressed package of springs is that once the vacuum source is removed from the inner tube, the springs are entirely dependent upon the presence of the outer containment sleeve for retaining their compressed condition. Thus, once the containment sleeve is severed, such as in opening of the package, the springs can expand to their fully extended state in an uncontrolled and somewhat abrupt manner. The result is that opening of the spring package by severing the containment sleeve with a sharp instrument, for example, can be a surprising and possibly dangerous experience. Accordingly, it is desirable to provide a vacuum packaging method for packaging springs in a manner which permits controlled expansion of the springs upon opening of the package.

### SUMMARY OF THE INVENTION

The present invention improves over the prior art by providing a method of packaging a resiliently compressible article comprising the steps of inserting the article into a tube of deformable material such that excess material is provided at the ends of the tube. A first end of the tube is then sealed closed. Air is then evacuated from the tube through the second end thereby deforming the tube around the article and causing the article to compress. While a vacuum is maintained in the tube, the second end of the tube is sealed closed. A containment sleeve is fitted over the sealed tube to maintain the article in a compressed state. When the article is unpackaged, the containment sleeve is severed and the tube is allowed to expand in a gradual, controlled fashion by the bleeding of air back into the tube.

### BRIEF DESCRIPTION OF THE DRAWINGS

The foregoing and other novel features of the invention will become apparent upon a reading of the following detailed description taken in conjunction with the accompanying drawings wherein:

FIG. 1 is a fragmentary side elevational view of a string of pocketed coil springs as known in the prior art;

FIG. 2 is a side elevational view partly broken away showing a packaging system in accordance with the invention prior to evacuation; and

FIG. 3 is a side elevational view partly broken away showing the packaging system after evacuation.

### DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT

Referring now to the drawings, and initially to FIG. 1, a string of coil springs, as known in the art for use in innerspring construction of mattresses or the like is designated generally by the reference numeral 10. The coil string



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10 includes individual coil springs 12 which are encapsulated in discrete pockets of suitable fabric 14. The fabric 14 is preferably heat sensitive such that ultrasonically formed welds 16 create webs 18 between adjacent coils 12 thereby defining the pockets. It can be appreciated that in this construction of a mattress innerspring or the like, the coil springs 12 are typically formed of relatively few coil turns and relatively weak compressive strength. Accordingly, these springs 12 can readily be compressed to a size which is only a fraction of their naturally expanded size.

Turning now to FIG. 2, a package system in accordance with the invention is designated generally by the reference numeral 20. The system 20 is shown as packaging a string of coil springs 10 of the type illustrated in FIG. 1, comprising coil springs 12 which are pocketed in fabric 14. The string 10 is inserted into a tube of deformable material 22. In preferred form, this material 22 is  $\frac{3}{4}$  mil polyethylene which has been extruded into tubular form and is supplied in roll form. The tube 22 has a length greater than the length of the coil string 10 such that the two ends of the tube 22 define portions 24 of excess tube material 22.

Illustrated in FIG. 3 is the package system 20 shown in completed form, wherein the coil string 10 has been compressed and is maintained in a compressed state by a containment sleeve 26. Preferably, the containment sleeve 26 is an extruded tube of 4 mil polyethylene. In order to achieve the configuration of FIG. 3, one end 24 of the tube 22 is gathered and sealed. Sealing can be accomplished by various means including taking the gathered end 24, taping it closed, pinching the end 24 with a suitable clip or cable tie, or heat sealing the end 24. Then, the open end is manually gathered around a hose connected to a vacuum pump and the air within the tube 22 is evacuated. Evacuation of the tube 22 causes the tube to deform around the string of coils 10 and in turn causes the coils 10 to compress. When evacuation has reached a predetermined level, the containment sleeve 26 is installed over the compressed tube 22 and the second end 24 of the tube [is] may be sealed. The vacuum source is then removed.

It can now be appreciated that the packaging method in accordance with the invention provides a highly desirable method for packaging articles which are resiliently compressible. Although the invention has been described in connection with the packaging of coil string 10, it can be appreciated that numerous other compressible articles can be packaged with the present method for cost-effective shipment. The advantages of sealing the tube 22 at both ends 24 after evacuation should likewise be apparent. When the package 20 is delivered, the customer can sever the containment sleeve 26 and initially the tube 22 together with the article encapsulated therein will remain relatively compressed under the effect of the vacuum within the tube 22. Then, depending upon the type of end 24 sealing method used, air will gradually bleed into the tube 22 allowing the compressed article to slowly expand until the inside of the tube 22 reaches ambient air pressure. Accordingly, an undesirable, abrupt expansion of the tube 22 is avoided. If a sealing method is used which is too air tight, the tube 22 can simply be punctured with a small hole to allow air to enter the evacuated tube 22. By this method of packaging, strings 10 of pocketed coil springs 12 stacked 23 inches high can readily be compressed to a stack 5 inches high and, thereby, can be packaged for cost-effective shipment.

While the present invention has been described in connection with a preferred embodiment thereof, it will be apparent to those skilled in the art that many changes and modifications may be made without departing from the true

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spirit and scope of the invention. Accordingly, it is intended by the appended claims to cover all such changes and modifications as come within the true spirit and scope of the invention.

What is claimed is:

1. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:
  - providing a tube of deformable material, said tube having a predetermined length;
  - inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material;
  - sealing a first end of said tube;
  - evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;
  - [sealing said second end of said tube after evacuating said tube to a predetermined state;]
  - inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;
  - removing said evacuated tube from said containment sleeve; [and
  - puncturing said evacuated tube to allow] whereby said mattress assembly in said tube [to] gradually [return] returns to an uncompressed state.
2. The method of claim 1 wherein said first end of said tube is sealed after gathering the excess material of said first end.
3. The method of claim 1 wherein said evacuating step includes gathering said second end of said tube around a vacuum, evacuating means.
4. The method of claim 1 wherein said tube is cut to said predetermined length from a continuous length of tube material.
5. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:
  - providing a tube of deformable material, said tube having a predetermined length;
  - inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material;
  - sealing a first end of said tube;
  - evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;
  - sealing said second end of said tube after evacuating said tube to a predetermined state;
  - inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;
  - removing said evacuated tube from said containment sleeve; and
  - allowing said mattress assembly in said tube to gradually return to an uncompressed state.

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6. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:

providing a tube of deformable material, said tube having a predetermined length;

inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material;

sealing a first end of said tube;

evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;

sealing said second end of said tube while said tube is being evacuated to a predetermined state;

inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;

removing said evacuated tube from said containment sleeve; and

allowing said mattress assembly in said tube to gradually return to an uncompressed state.

7. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:

providing a tube of deformable material, said tube having a predetermined length;

inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material;

sealing a first end of said tube;

evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;

inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;

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removing said evacuated tube from said containment sleeve; and

allowing said mattress assembly in said tube to gradually return to an uncompressed state; and

said evacuated tube is punctured to allow said mattress assembly in said tube to gradually return to said uncompressed state.

8. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:

providing a tube of deformable material, said tube having a predetermined length;

inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material;

sealing a first end of said tube;

evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;

inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;

removing said evacuated tube from said containment sleeve;

allowing said mattress assembly in said tube to gradually return to an uncompressed state; and

said containment sleeve is severed to allow said mattress assembly in said tube to gradually return to said uncompressed state.

9. The method of claim 1 wherein said evacuated tube inserted into said containment sleeve is allowed to expand within said containment sleeve.

\* \* \* \* \*



**EXHIBIT 2**



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1 A P P E A R A N C E S

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4 FOR PLAINTIFF:

5 IMPERIUM PATENT WORKS

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24

25

♀

1                   BE IT REMEMBERED that pursuant to Notice, and  
2   on Monday, February 11, 2008, commencing at the hour of  
3   9:50 a.m. thereof, at Four Embarcadero Center, San  
4   Francisco, California, before me, LOUISE MARIE  
5   SOUSOURES, a Certified Shorthand Reporter, there  
6   personally appeared:

7                   SCOTT REEVES,  
8   called as a witness by the Defendants, and who, being  
9   first duly sworn, was thereupon examined and testified  
10   as hereinafter set forth:

11                  EXAMINATION BY MR. WILSON (CONTINUED):

12           Q.   Good morning, Mr. Reeves.

13           A.   Good morning.

14           Q.   Are you still the president of Zinus  
15   Incorporated?

16           A.   Correct.

17           Q.   Do you have any other titles with Zinus  
18   Incorporated?

19           A.   No.

20           Q.   Okay. Do you recall being deposed a couple  
21   months ago in this case?

22           A.   Yes.

23           Q.   Do you remember I gave you some instructions  
24   about, you know, what a deposition is about, guidelines  
25   for the deposition? Do you recall that I did that at

♀

11 Q. Has Zinus sold inner spring Mattress-in-a-Box  
12 product to walmart.com?

13 A. Yes.

14 Q. Has Zinus sold inner spring Mattress-in-a-Box  
15 product to wal-Mart Canada?

16 A. Yes.

17 Q. Has Zinus sold inner spring Mattress-in-a-Box  
18 product to any entity that is not affiliated with  
19 wal-Mart?



8  
+

2 Q. Has Zinus ever shipped or delivered a  
3 demonstration product to any entity other than Wal-Mart  
4 or Wal-Mart affiliates?

5 A. Can you help me better understand that?

6 Q. Sure. Have you ever shipped a box of inner  
7 spring Mattress-in-a-Box product to anybody to evaluate?

8 A. Probably so.

9 Q. Do you have any doubt as to whether Zinus has  
10 done that?

11 A. No, we shipped our sample to other customers  
12 before other than Wal-Mart and they were in a box.

♀

5                   when you make presentations to customers, does  
6   Zinus bring a boxed product?

7           A. Initially, but then we set -- if the meeting is  
8   at our facilities, then everything is already set up.

9           If we fly to our destination, we will unpack  
10   the mattress so that the buyer sees it unpacked and  
11   boxed separate.

12          Q. Can you identify customers for which Zinus has  
13   taken a box and unpacked it for a customer presentation?

14          A. Oh, Wal-Mart.

15          Q. When you say Wal-Mart, are you referring to  
16   Wal-Mart Incorporated?

17          A. Yes.

8

11 Q. Does Zinus have a -- has Zinus ever had any  
12 contractual relationships with wal-Mart?

13 A. No, everything's been arm's length kind of  
14 relationship with them.

15 Q. Has Zinus ever entered into a written sales  
16 plan with wal-Mart?

17 A. No.

18 Q. Has Zinus ever entered into a written supply  
19 agreement with wal-Mart?

20 A. There's a supply agreement that all vendors  
21 have with wal-Mart, so we have. In fact, it's called a  
22 vendor agreement.

23 Q. Zinus has signed a written supply agreement  
24 with wal-Mart, correct?

25 A. Yes.

♀

17 Q. Has Zinus ever done presentations for wal-Mart  
18 where it has taken the compressed mattress out of what  
19 you referred to as the duffel bag in your previous  
20 deposition?

21 A. Yes.

22 Q. How many times has Zinus done presentations  
23 like that for wal-Mart?

24 A. I'm not sure how many. A few times. I did one  
25 myself to senior management of wal-Mart where I took the

9

1 mattress out of the box and cut it open across the  
2 mattress sides and then it popped open and I had her lay  
3 on it right away.

4 Q. When you say you cut it open, you mean you cut  
5 the plastic wrapper that the mattress was compressed in?

6 A. Yeah.

7 MR. WALLACE: Objection, vague, calls for a  
8 legal conclusion.

9 BY MR. WILSON:

10 Q. Let me make sure I understand what happened.

11 In the presentation that you were just  
12 discussing that you personally did for Wal-Mart, you  
13 removed the mattress packed in the duffel bag out of the  
14 box, correct?

15 A. Correct.

16 Q. You then took the mattress out of the duffel  
17 bag, correct?

18 A. Correct.

19 Q. You then cut the plastic wrapper surrounding  
20 the mattress so that it could decompress, correct?

21 A. Yeah, the way we do it is we have to -- we slit  
22 the wrapper all the way across so that it can pop open  
23 immediately so it's a very rapid, you know, it's eye  
24 popping, it pops up right away and you can lay on it  
25 right away.



8

1                   So that's what we're trying to convey in a  
2 presentation like that.

3           Q. During this presentation, you allowed the  
4 mattress to return to its uncompressed state, correct?

5           A. Yes, which it does immediately.

6           Q. When you say immediately, in that particular  
7 presentation, how long did it take?

8           A. Less than a minute. It's just instantaneous.

8

18 Q. Does Zinus expect people who receive or view  
19 the promotional materials that Zinus creates to believe  
20 the statements in those materials are truthful?

21 A. Sure.

22 Q. Does Zinus intend the information that it puts  
23 in its promotional materials to be truthful?

24 A. Sure.

25 Q. Are you aware of any instance when Zinus has

♀

1     circulated advertising or promotional materials that  
2     contain statements that were not truthful?

3             A.   Not to my knowledge.

4             Q.   Has Zinus designed packaging for its  
5     Mattress-in-a-Box product?

6             A.   Yes.

8

13 Q. Do you care whether retail customers believe  
14 the wording on the box?

15 A. We care.

16 Q. Does Zinus endeavor to be truthful in the  
17 statements that it places on the box for its product?

18 A. Yes, we endeavor to be truthful.

19 Q. Are you aware of any instance in which Zinus  
20 has not been truthful in the statements that it has  
21 placed on the box for the inner spring Mattress-in-a-Box  
22 product?

23 A. I'm not sure I'm aware of any time that that  
24 has happened.

♀

22           Q. In the product that you shipped to wal-Mart  
23 stores Incorporated, has Zinus included instructions  
24 inside the box?

25           A. I believe we did. I believe we did.



9

1 Q. In the inner spring Mattress-in-a-Box product  
2 that Zinus has supplied to walmart.com, has Zinus  
3 included product instructions in the boxes?

4 A. I'm not sure, but I believe so, but I'm not  
5 sure on that.

6 Q. And who would know the answer to that?

7 A. Our people would. Our people in our Pleasanton  
8 office.

9 Q. Anybody in particular?

10 A. Bruce or our Bentonville office personnel who  
11 handle Wal-Mart would know.

12 Q. In the product that you provided to Wal-Mart  
13 Canada, have there been instructions placed inside the  
14 boxes?

15 A. I don't know.

16 Q. Have there been instructions placed inside the  
17 boxes for inner spring Mattress-in-a-Box product that  
18 Zinus has supplied to customers other -- actual  
19 prospective customers other than Wal-Mart?

20 A. I don't believe so, but I'm not sure. I do not  
21 believe so, though.

♀

1 Q. You referred earlier to a presentation that you  
2 personally made to wal-Mart stores where you took a  
3 mattress out of the box, opened the packaging and  
4 allowed it to be decompressed.

5 Do you recall that testimony?

6 A. Yes.

7 Q. Are you aware of any presentations made by  
8 others at Zinus to wal-Mart where they have taken a  
9 mattress out of the box -- taken it out of the packaging  
10 and allowed it to uncompress?

11 A. There may have been a few other instances and  
12 because the process is very quick, and so from the time  
13 we take it out of the box to the time it's set up, it  
14 just pops right up.

15 So there may have been a few, but if it was,  
16 it's probably a handful of times.

17 Q. What was your purpose in giving wal-Mart the  
18 presentation that you gave them when you took the  
19 mattress out of the box and opened it?

20 A. The purpose of my presentation was to show the  
21 senior management what it would look like in-store in  
22 its box, how it's pulled out of the box and how it  
23 instantaneously opens up.

24 So you can -- she literally laid on it within a  
25 very quick period of time, from just opening it up and

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1 just so she could feel how comfortable it was.

2 Q. You wanted your customer Wal-Mart to understand  
3 the process of removing the box -- the mattress from its  
4 packaging and allowing it to uncompress, correct?

5 A. Correct.

6 Q. Have --

7 A. I want to make sure that you understand that  
8 this is a process that's quick. This is not --

9 Q. I think you said that a number of times.

10 A. Okay, good. I want to make sure it's something  
11 that happens quick and that's the purpose of giving a  
12 presentation like that.

♀

14 Q. When you say the mattress expands immediately,  
15 in less than a minute, does it take the mattress less  
16 than a minute to fully expand to the volume that it was  
17 at before it was compressed?

18 A. Close to it. Not exact.

19 Q. How long does it take for the mattress to fully  
20 expand to its uncompressed state?

21 MR. WALLACE: Objection, vague.

22 THE WITNESS: That really -- that might vary on  
23 the different styles that you manufacture.

24 The current styles that we're selling, it's,  
25 gosh, within a couple minutes.

♀

1                   But again, you can -- as soon as you open it  
2   up, you'll see it pop up and you can lay on it right  
3   then.

4   BY MR. WILSON:

5           Q.   Has anyone ever told you that -- strike that.

6                   Has anyone ever told Zinus that it takes more  
7   than an hour for the mattress to fully reexpand to its  
8   uncompressed state?

9           A.   Again, that may depend on the construction of  
10   the product.

11          Q.   I'm asking you regardless of the construction  
12   of the product, has anybody ever advised Zinus that it  
13   has taken more than an hour for an inner spring  
14   Mattress-in-a-Box product to fully expand to its  
15   uncompressed state?

16               MR. WALLACE:  Objection, vague.

17               THE WITNESS:  Of an inner spring mattress?

18   BY MR. WILSON:

19          Q.   Yes.

20          A.   An hour specifically?

21          Q.   I said more than an hour.

22          A.   Not on the products that we've shown to  
23   Wal-Mart or walmart.com.

24          Q.   How about --

25          A.   But some cases, that may have occurred, but



♀

1     that's if it has memory foam built on top of it, which  
2     it tends to be a little slower in recovering air, but  
3     the springs pop up right away.

♀

17 Q. Are you aware of any instance in which somebody  
18 has been injured by the expansion of an inner spring  
19 Mattress-in-a-Box product?

20 A. No.

21 Q. Are you aware of any instance in which a person  
22 has been frightened by the expansion of an inner spring  
23 Mattress-in-a-Box product?

24 A. Not to my knowledge.

25 Q. Have there been any instances in which you've

†

1 heard that customers have complained that the expansion  
2 was abrupt?

3 A. No, not to my knowledge.

4 Q. Does Zinus maintain a customer service number  
5 for its customers' customers who purchase inner spring  
6 Mattress-in-a-Box products?

7 A. Yes.

8 Q. Has Zinus ever received calls from those  
9 customers?

10 A. Yes.

11 Q. Does Zinus maintain any record of those calls?

12 A. Yes.

13 Q. What type of record?

14 A. Who the customer is, what the issue is, and how  
15 the situation needs to be resolved.

16 Q. Have any customers ever called with concerns  
17 about the speed at which the Mattress-in-a-Box product  
18 returns to its uncompressed state?

19 A. I don't know.

20 Q. Has Zinus ever received any calls from  
21 customers who don't know how to take the  
22 Mattress-in-a-Box product out of the box?

23 A. Perhaps, but I'm not sure.

24 Q. Has Zinus ever received any calls from  
25 customers who don't know how to take the

♀

1 Mattress-in-a-Box mattress out of the plastic wrapper  
2 that surrounds it?

3 A. Perhaps, but I'm not sure.

4 Q. Has Zinus ever received any calls from  
5 customers who were unable to remove the  
6 Mattress-in-a-Box mattress from either the duffel bag or  
7 the fabric roll?

8 A. I'm not sure.

9 Q. Would the records that you have of customer  
10 calls contain this information?

11 A. They may or may not.

12 MR. WILSON: I'd like to have marked as  
13 Exhibit 213 a document bearing -- actually, no Bates  
14 number on it, it's identified as Exhibit E to your  
15 declaration.

16 (Exhibit No. 213 was marked.)

17 BY MR. WILSON:

18 Q. Do you recognize this document?

19 A. I believe so.

20 Q. What is this document?

21 A. I think this is the setup instructions for  
22 unpacking the mattress -- setting up the mattress.

23 Q. These are the instructions that Zinus includes  
24 inside the box for its inner spring Mattress-in-a-Box  
25 product, correct?

8

1 A. Correct.

2 Q. Does Zinus expect that customers who purchase  
3 the Mattress-in-a-Box product for use will follow these  
4 instructions?

5 A. Yes.

6 Q. Do you understand that customers who purchase  
7 the product for their use will follow these  
8 instructions?

9 A. Yes.

10 Q. Specifically, you understand that customers who  
11 purchase an inner spring Mattress-in-a-Box product will  
12 take the spring mattress from the box and lay it on the  
13 floor, correct?

14 A. Uh-huh, yes.

15 Q. Zinus expects that customers will cut the outer  
16 polyethylene bag along the sewing line with scissors; is  
17 that right?

18 A. Correct.

19 Q. Zinus understands that's what customers will do  
20 as well, correct?

21 A. Correct.

22 Q. In fact, it's true, isn't it, that in order to  
23 use the Mattress-in-a-Box product for its intended  
24 purpose, customers must remove the Mattress-in-a-Box  
25 product from either the duffel bag or the fabric roll?

♀

1 MR. WALLACE: Objection, vague.

2 THE WITNESS: I'm not sure what fabric roll is.

3 BY MR. WILSON:

4 Q. The fabric on the swirl wrapped product.

5 A. Oh, okay.

6 MR. WILSON: Could you reread the question,  
7 please?

8 (The record was read by the Reporter.)

9 THE WITNESS: My confusion there was, I  
10 believe, in my first deposition, you were referring to  
11 it as film.

12 And I don't remember it being referred to as  
13 fabric. I'm not sure I remember that.

14 That's where I've --

15 BY MR. WILSON:

16 Q. That's okay. I just need an answer to the  
17 question.

18 Why don't we read the question back one more  
19 time so you have it firmly in mind so I can get a clean  
20 answer to the question.

21 (The record was read by the Reporter.)

22 THE WITNESS: Correct.

23 BY MR. WILSON:

24 Q. What is the intended purpose or use of the  
25 Mattress-in-a-Box product?

♀

1 A. The intended purpose is to sleep on it.

2 Q. Zinus intends that customers will cut open the  
3 vacuum sealed bag surrounding the mattress, correct?

4 A. Correct.

5 Q. And Zinus understands that end user customers  
6 for the Mattress-in-a-Box product do, in fact, puncture  
7 or sever the vacuum seal bag, correct?

8 MR. WALLACE: Objection, compound.

9 THE WITNESS: The consumers understand that  
10 they need to cut across the entire width or length of  
11 that product for -- and then remove the mattress from  
12 that wrapper so that they can sleep on it.

13 BY MR. WILSON:

14 Q. Zinus understands that customers, in fact, do  
15 cut the vacuum sealed bag to be able to use the  
16 mattress, correct?

17 A. Yes, they cut it all the way across, one way or  
18 the other.

19 Q. They have to do that in order to be able to use  
20 the mattress for its intended purpose, correct?

21 A. Correct.

22 Q. Once the vacuum sealed bag is cut, Zinus  
23 intends the customer will then allow the compressed  
24 mattress to fully expand to its original shape, correct?

25 MR. WALLACE: Objection, vague.

8

1                   THE WITNESS: Yes.

2       BY MR. WILSON:

3           Q. Zinus understands that customers, in fact, do  
4       allow the compressed mattress to uncompress to its  
5       original state, correct?

6           A. Correct.



8

19 Q. Aside from the presentation that you made for  
20 Wal-Mart, where you took a mattress out of the box and  
21 allowed it to uncompress, are you aware of any other  
22 presentations that Zinus has made to anybody in which  
23 they have taken a mattress out of the box and allowed it  
24 to uncompress?

25 A. I believe there's been a handful of

8

1 presentations given that may have -- where we may  
2 have -- but I don't know if it was memory foam or if it  
3 was inner spring.

4 Q. Is it fair to say that you can't, sitting here  
5 today, identify any presentations other than ones you  
6 have already discussed for inner spring mattresses in  
7 which the mattress was taken out of the box and pulled  
8 out to uncompress?

9 A. I can't give you a definitive truthful answer  
10 on that.

11 I can say that it's -- it's a few, maybe a  
12 dozen, maybe less.

13 I'm not sure.

14 Q. And you can't identify who those presentations  
15 might have been made to, correct?

16 A. Not specifically.

♀

9 Q. Would you say that the Zinus inner spring  
10 Mattress-in-a-Box product expands in an uncontrolled  
11 manner?

12 MR. WALLACE: Objection, vague.

13 THE WITNESS: No. No.

14 BY MR. WILSON:

15 Q. Would you say that the inner spring  
16 Mattress-in-a-Box product expands in a controlled  
17 manner?

18 MR. WALLACE: Vague.

19 THE WITNESS: I would say that the mattress  
20 rises quickly and very controlled.

21 BY MR. WILSON:

22 Q. Has Zinus performed any internal testing on its  
23 Mattress-in-a-Box products -- strike that, let me ask a  
24 better question.

25 Can you think of any instance in which Zinus

8

1 has taken an inner spring Mattress-in-a-Box product out  
2 of the box and performed testing on it?

3 A. Oh, yeah.

♀

22           Q. You would not consider opening the Zinus  
23   Mattress-in-a-Box inner spring product to be a dangerous  
24   experience, correct?  
25           A. Not at all.

7

1 Q. Aside from in the instructions that it has  
2 provided in its inner spring Mattress-in-a-Box products,  
3 has Zinus ever demonstrated or explained to anybody else  
4 how to take the inner spring Mattress-in-a-Box product  
5 out of the box and decompress it?

6 A. You mean in a presentation?

7 Q. In any form.

8 A. I think I just -- I think I just answered that  
9 question, where we've taken it out of the box maybe a  
10 dozen times, maybe less, but we've presented the product  
11 in an uncompressed manner to where we -- from compressed  
12 to uncompressed.

13 Q. Aside from those presentations that you  
14 referenced earlier, have there been other instances in  
15 which Zinus has explained to people how to remove the  
16 inner spring Mattress-in-a-Box product from its  
17 packaging and allow it to decompress?

18 A. Maybe. Verbally, maybe.

19 Q. In what instances?

20 A. Oh, I have no idea. Could be at a trade show,  
21 could be in a ballroom. Could be you ought to see it,  
22 it's really cool, but I'm not aware of.

♀

25

Q. Is it fair to say that the inner spring

8

1 Mattress-in-a-Box product cannot be used for its  
2 intended purpose unless it is removed from the duffel  
3 bag or fabric or film roll?

4 MR. WALLACE: Vague, and calls for a legal  
5 conclusion.

6 THE WITNESS: If your question is does it have  
7 to be removed from the duffel bag or from the film wrap,  
8 then I would say yes.

9 BY MR. WILSON:

10 Q. And the Mattress-in-a-Box needs to be removed  
11 from the plastic wrapper to be used for its intended  
12 purpose, correct?

13 A. Yes.

14 Q. Mattress-in-a-Box needs to expand to its  
15 uncompressed state to be able to be used?

16 A. Correct.

17 Q. Would you agree that those are steps that any  
18 consumer intending to use the Mattress-in-a-Box product  
19 as a mattress would take, whether or not they had  
20 instructions?



♀  
†

1           I, LOUISE MARIE SOUSOURES, duly authorized to  
2     administer oaths pursuant to Section 2093(b) of the  
3     California Code of Civil Procedure, do hereby certify:  
4     That the witness in the foregoing deposition was by me  
5     duly sworn to testify the truth in the within-entitled  
6     cause; that said deposition was taken at the time and  
7     place therein cited; that the testimony of the said  
8     witness was reported by me and was hereafter transcribed  
9     under my direction into typewriting; that the foregoing  
10    is a complete and accurate record of said testimony; and  
11    that the witness was given an opportunity to read and  
12    correct said deposition and to subscribe the same.

13           Should the signature of the witness not be  
14    affixed to the deposition, the witness shall not have  
15    availed himself or herself of the opportunity to sign or  
16    the signature has been waived.

17           I further certify that I am not of counsel, nor  
18    attorney for any of the parties in the foregoing  
19    deposition and caption named, nor in any way interested  
20    in the outcome of the cause named in said caption.

21

22           DATED: \_\_\_\_\_, 2008

23

24

25

LOUISE MARIE SOUSOURES,  
CSR. NO 3575

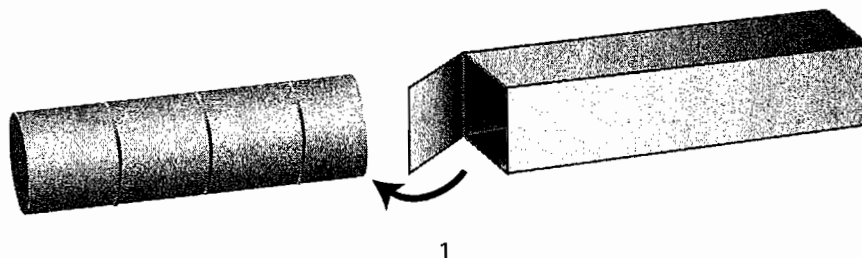
**EXHIBIT 3**

SLUMBER<sup>®</sup> 1<sup>TM</sup>

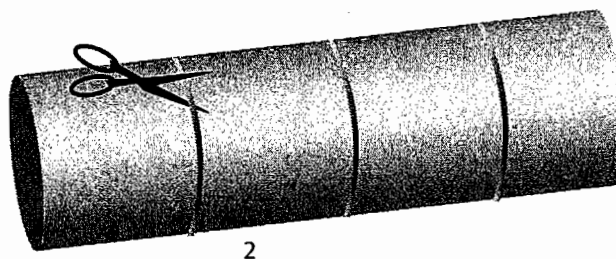
# Direcciones en Desempacar de colchón

LEA POR FAVOR ESTAS DIRECCIONES COMPLETAMENTE ANTES DE DESEMPACAR SU NUEVO COLCHON

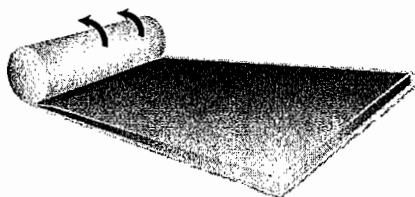
1. Prepare el lugar donde su colchón será utilizado tal como una base plana para cama o "Box Spring" asegúrese de que este limpio, plano y suficientemente resistente para soportar el peso, tal como las bases SmartBase<sup>TM</sup> o SmartBox<sup>TM</sup>. Coloque la caja en su lado y quite el colchón que viene comprimido.



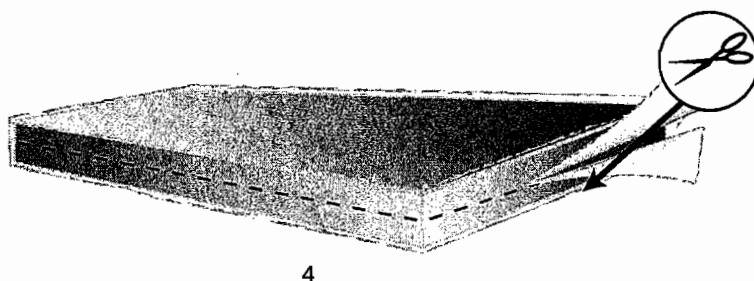
2. Utilizando las tijeras, corte con cuidado la cinta que mantiene el colchón apretadamente enrollado. Tenga cuidado para evitar que las tijeras corten en el plástico protector. (NO UTILICE NINGUN TIPO DE CUCHILLO). Por este momento no corte la envoltura interior, plástica y clara.



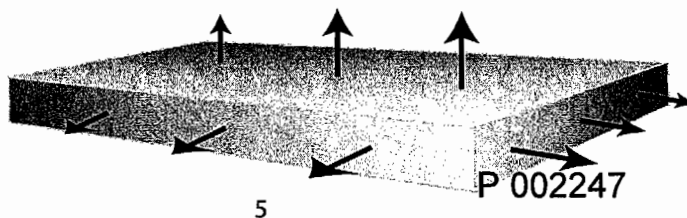
3. Con la envoltura plástica clara todavía intacta, desenrolle y despliegue el colchón comprimido y colóquelo en la posición donde usted estará durmiendo.



4. Con cuidado corte la bolsa plástica clara por las orillas. El colchón comienza instantáneamente a descomprimir. Quite la bolsa.



5. El colchón está listo para ser utilizado en este mismo momento usted ya puede agregar las sábanas y las mantas. Cosméticamente, puede tomar hasta 48 horas para que la cama tome completamente a su forma original.



P 002247

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## Translate Text

Original text:

Cosmeticamente, puede tomar hasta 48 horas para que la cama tome completamente a su forma original

Automatically translated text:

Cosmeticamente, can take up to 48 hours to completely take the bed to its original form

Spanish to English



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## Translate a Web Page

http://

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**EXHIBIT 4**



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## 8" TIGHT TOP SPRING MATTRESS-IN-A-BOX TWIN

★★★★★ (2 Customer Ratings)

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ROLLBACK

**\$179.85 - \$269.86**

See pulldown for each item's price

Availability:

• Online - IN STOCK



Select Size

Select

ADD TO CART

Delivery Options:

• Ship to home  
Usually takes 24 to 48 hours to  
[See estimated arrival date.](#)

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### Information below:

- [Features & Specifications](#)
- [Complete the Look](#)
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### Complete the Look



Sorry, photo  
not available

[Simmons Deep Sleep I](#)  
**\$89.88 - \$199.76**



Sorry, photo  
not available

[Simmons Beautyrest I](#)  
[Spring](#)  
**\$159.88 - \$339.76**

↓ [See more below](#)

## Features & Specifications

Sleep tight on this Tight Top Spring Mattress-the revolutionary Rebound Technology mattress expands to its original shape in minutes when unpacked.

### Tight Top Pocket Spring Mattress

- Springs provide undistributed rest - even as you toss and turn, meaning better motion separation
- Constructed to adjust individually to your weight and body shape
- Made of heavier gauge steel coil for comfort and durability
- Soft yet durable foams designed for maximum comfort and support
- Available sizes in Twin, Full, Queen, and King
- Twin Dimensions: 75" X 39" X 8"
- Full Dimensions: 75" X 54" X 8"
- Queen Dimensions: 80" X 60" X 8"
- King Dimensions: 80" X 76" X 8"

Shipping Weight (in pounds):

52.03

Product in Inches (L x W x H): 75.0 x 39.0 x 8.0  
Assembled in Country of Origin: USA and/or Imported  
Origin of Components: USA and/or Imported  
Wal-Mart No.: 001767791

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## Customer Product Reviews

[Rate and review this product](#)

Sort by... 

### Mattress in a roll, 12/31/2007

By **MysticPrincess7**, McMinnville, OR [Read all reviews by this reviewer](#)

★★★★★

#### Product Attributes:

Value for price paid: ★★★★★

Meets Expectations: ★★★★★

Features: ★★★★★

Appearance: ★★★★★

Who would believe it! This came rolled up in a box and we had to let it sit for 48 hours to fully reach it's size. I was able to move it by myself. Our old mattress had deep crevices we had to sleep in (we both are on the plus side). This mattress is soooooo comfortable. It has kind of a pillow top feel without the pillow top. I don't expect it to last forever. The last time I paid \$225 for a mattress it lasted us 5 years. This one will do nicely til we win the lottery and can buy a luxury one! This one will then be our new guest bed! It's so comfortable I am afraid our guests will never leave, though.

Recommends this product? **Yes**

Age: **45 - 54**

Gender: **Female**

Has owned product for: **2 - 7 weeks**

Uses product: **Every day**

**1 of 1** people found this review helpful.

**Was this review helpful to you?** [Yes](#) [No](#)

[Report inappropriate content](#)

### Awsome value, 12/28/2007

By **deliberateshopper**, Missoula, MT [Read all reviews by this reviewer](#)

★★★★★

#### Product Attributes:

Value for price paid: ★★★★★

Meets Expectations: ★★★★★



Features: ★★★★★

Appearance: ★★★★★

I was very skeptical of buying this product because my usual thought is that you get what you pay for. I went ahead and ordered it anyway because I knew I would not be using it that much and I did not want to spend that much money. To my surprise, this mattress is very comfortable. This is coming from a comfort snob who owns the top of the line temporpedic memory foam mattress. I would not trade my temporpedic but I would not mind spending the night on this bed if I had too. It met all of my needs and then some.

Recommends this product? **Yes**

Age: **35 - 44**

Gender: **Male**

Has owned product for: **2 - 7 weeks**

Uses product: **A few times per month**

Was this review helpful to you? [Yes](#) [No](#)

[Report inappropriate content](#)

1 - 2 of 2 reviews

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## Complete the Look

★  
Sorry, photo  
not available

[Simmons Deep Sleep Box Spring](#)

**\$89.88 - \$199.76**

The Simmons Deep Sleep Triton foundation includes a framework of Canadian spruce and welded elements.

★  
Sorry, photo  
not available

[Simmons Beautyrest Triton Box Spring](#)

**\$159.88 - \$339.76**

The Simmons Beautyrest Triton foundation includes a framework of Canadian spruce and welded elements.



[Spa Sensations Memory Foam Contour Pillow](#)

**\$15.88**

This memory foam contour pillow conforms and molds to your head and neck, allowing an amazingly comfortable night's sleep.

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## Shipping & Delivery

**Processing time** for an item is the time from when you submit your order to when the item leaves the warehouse. You can usually find an item's processing time when you click



"See estimated arrival date" on the item page.

**Shipping time** is from when the item leaves the warehouse to when it arrives at your door. See shipping time below.

The arrival date-range of each item is determined by adding the minimum of the processing time to the minimum of the shipping time and the maximum of the processing time to the maximum of the shipping time. For instance, if you bought a music CD that took 1 to 2 business days to process before shipping and you had it sent by Standard shipping (3 to 5 business days), the CD would arrive in 4 to 9 business days.

You will usually see the estimated arrival date-range when you click "See estimated arrival date" on the item page. You will see the actual arrival date-range during checkout.

Shipping times apply to shipments in the continental United States. For shipments sent by Standard shipping to Alaska and Hawaii, add 2-4 days to the shipping time. Delivery to APO/FPO addresses takes 3 to 6 weeks.

**Please note:** Oversize items cannot be shipped to Alaska, Hawaii, U.S. protectorates and territories, or APO/FPO addresses. At this time, delivery is limited to street addresses in the 48 contiguous states. You will see the actual arrival date in checkout after you choose a shipping address.

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## Gifting Options

---

The following available options may be selected during checkout:

**Gift Message:** Add a personal note that we'll include with your gift.

**Gift Receipt:** When you add other gift options, we'll include a receipt that keeps the price a secret but makes it easy to exchange or return an item.

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[Offer Details and Card Application](#)

### Other Payment Options

- Bill Me Later® — [see details](#)
- Wal-Mart Credit Card
- Wal-Mart Gift Card
- Visa, MasterCard, American Express, Discover and Wal-Mart Discover issued by U.S.

banks only\*

- Debit cards (also called check cards, ATM cards or banking cards) which display a Visa or MasterCard logo on the front.

\* This does not include the Wal-Mart Community and Business Card, which we are not able to accept.

We're sorry, but at this time we do not accept checks, money orders or credit cards issued by foreign (non-U.S.) banks. Please do not send cash.

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ndc-www16.walmart.com  
/catalog/product.do, /catalog/fusionItem.do  
/include/dynamic/tiles/templates/item/fusionItem.jsp

**EXHIBIT 5**



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## gradual

SYLLABICATION: grad·u·al

PRONUNCIATION: ˈɡræjˈooəl

ADJECTIVE: Advancing or progressing by regular or continuous degrees: *gradual erosion*; *a gradual slope*.

NOUN: *Roman Catholic Church* 1. The liturgical book containing the chants for the Mass. 2. A biblical text sung between the Epistle and the Gospel of the Mass.

ETYMOLOGY: Middle English, having steps, from Medieval Latin *graduālis*, from Latin *gradus*, step; see [grade](#). N., Middle English, from Medieval Latin *graduāle*, the part of the service sung by the choir from the altar steps, gradual, from neuter sing. of *graduālis*.

OTHER FORMS: **grad' u·al·ly** —ADVERB  
**grad' u·al·ness** —NOUN

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**EXHIBIT 6**

---

**From:** Wilson, Kenneth (Perkins Coie)  
**Sent:** Thursday, January 17, 2008 11:49 PM  
**To:** darien  
**Subject:** New Summary Judgment Motion

Darien:

I have now had a chance to analyze Zinus' most recent motion for summary judgment, on the direct infringement issues. Not surprisingly, we believe this third summary judgment motion is premature. Not only have we not gotten to claim construction yet, but Zinus (and Simmons and Dreamwell, although that's irrelevant for purposes of this motion) has not even produced its Initial Disclosure documents yet. Moreover, given the deadlines set forth in the Interim Order on Zinus' Motion for Reconsideration and the upcoming Markman deadlines, I think the schedule for the most recent summary judgment is overly ambitious, even if the relevant discovery had been provided. Accordingly, we would ask that you continue the hearing on your most recent motion by a couple of weeks.

In addition, Dreamwell must insist that Zinus provide all of the documents identified in its initial disclosures without further delay; if Zinus does not agree to move the hearing, we will need those documents by no later than next Tuesday, January 22. This would include all documents relating to Zinus' invalidity claims; all documents relating to the various manufacturing and packaging processes for the innerspring Mattress-in-a-Box product; and all communications with Wal-Mart or other customers regarding the Mattress-in-a-Box product. You also need to provide clean copies of the Exhibits to the new summary judgment motion, as the .pdf versions of at least the box labels are hard to read. We will also want any testing or other documentation relating to how quickly the mattress takes to fully expand to its uncompressed state.

Finally, since Mr. Reeves has submitted a Declaration, we will want his deposition, limited to the issues raised in Zinus' motion. We will need that deposition at least two business days before our opposition is due, so we have time to incorporate the deposition into the opposition, and the deposition needs to be held at least two days after Zinus produces the relevant documents so we will have time to review the documents in advance of the deposition. That means the deposition would need to be held on Thursday or Friday of next week, if the motion is to be kept on the current schedule. I should add that I already have a meeting scheduled for Friday afternoon that cannot be moved, so if the deposition is going to be held on Friday, it would need to start by 10:00 a.m.

Please let me know Zinus' response to these issues at your earliest convenience.

Thanks,

Ken

Kenneth B. Wilson  
Perkins Coie LLP  
Four Embarcadero Center, Suite 2400  
San Francisco, CA 94111  
Phone: 415-344-7001  
Fax: 415-344-7201

**EXHIBIT 7**



---

**From:** darien [mailto:darien@imperiumpw.com]  
**Sent:** Friday, January 18, 2008 2:25 PM  
**To:** Wilson, Kenneth (Perkins Coie)  
**Subject:** New Summary Judgment Motion

Ken,

Scott Reeves will be available to have his deposition taken next Friday morning starting at 9 a.m. That will give you more time to ask your questions before your other meeting on Friday afternoon. The deposition will be limited to the issues raised in Zinus' second summary judgment motion.

You asked for all of the documents listed in Zinus' initial Rule 26(a)(1) disclosures. Those documents are listed below.

1. A copy of the prosecution history (file wrapper) of U.S. patent application serial no. 08/416,065 filed on April 4, 1995, abandoned.
2. A copy of the prosecution history (file wrapper) of patent application serial no. 08/694,803 filed on August 9, 1996, and issued on April 22, 1997, as U.S. Patent no. 5,622,030, which claims priority to U.S. patent application serial no. 08/416,065.
3. A copy of the prosecution history (file wrapper) of reissue patent application serial no. 08/919,655 filed on August 28, 1997, and re-issued on March 16, 1999, as U.S. Patent no. Re. 36,142 ("the '142 Patent"), which is a reissue patent of U.S. Patent no. 5,622,030.
4. Documents relating to the invalidity and unenforceability of the '142 Patent.
5. Documents and/or things relating to the non-infringement of the '142 Patent by the manufacturing process of the Mattress-in-a-Box product.
6. Documents concerning communications between Zinus and Wal-Mart relating to the Mattress-in-a-Box product.
7. Financial records of Zinus relating to the manufacture and sale of the Mattress-in-a-Box product.
8. Documents concerning communications between Zinus and defendants.
9. Documents and/or things concerning Simmons' breach of the Confidentiality and Non-Disclosure Agreement executed by Zinus and Simmons on March 30, 2007.
10. Documents and/or things concerning Zinus' use of the words "pocket coil" in commerce in the United States.

The documents under items 1-3 were produced as exhibits to Zinus' first summary judgment motion. Dreamwell is not yet entitled to the disclosures listed under item 4 because those documents are defined in the Patent Local Rules 3-3 (Preliminary Invalidity Contentions) and are not due until February 20, 2007. In addition, Zinus will brief some of these issues according to Judge Trumbull's interim order. The documents under items 9 and 10 concerning the "pocket coil" trademark and breach of the NDA do not relate Zinus' second summary judgment motion. So I see no reason why these documents must be produced by next Wednesday.

So the only documents that Zinus would be producing would be those defined in items 5-8. Zinus will produce these documents by Wednesday in pdf form. Zinus is not willing to continue the hearing on its second summary judgment motion.

I hope this satisfies your discovery needs relating to Zinus' second summary judgment motion.

Regards,

Darien

Darien K. Wallace  
Imperium Patent Works  
P.O. Box 587  
Sunol, CA 94586  
Tel: (925) 550-5067

---

**From:** Wilson, Kenneth (Perkins Coie) [mailto:KWilson@perkinscoie.com]  
**Sent:** Friday, January 18, 2008 12:12 AM  
**To:** darien  
**Subject:** New Summary Judgment Motion

Darien:

I have now had a chance to analyze Zinus' most recent motion for summary judgment, on the direct infringement issues. Not surprisingly, we believe this third summary judgment motion is premature. Not only have we not gotten to claim construction yet, but Zinus (and Simmons and Dreamwell, although that's irrelevant for purposes of this motion) has not even produced its Initial Disclosure documents yet. Moreover, given the deadlines set forth in the Interim Order on Zinus' Motion for Reconsideration and the upcoming Markman deadlines, I think the schedule for the most recent summary judgment is overly ambitious, even if the relevant discovery had been provided. Accordingly, we would ask that you continue the hearing on your most recent motion by a couple of weeks.

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Finally, since Mr. Reeves has submitted a Declaration, we will want his deposition, limited to the issues raised in Zinus' motion. We will need that deposition at least two business days before our opposition is due, so we have time to incorporate the deposition into the opposition, and the deposition needs to be held at least two days after Zinus produces the relevant documents so we will have time to review the documents in advance of the deposition. That means the deposition would need to be held on Thursday or Friday of next week, if the motion is to be kept on the current schedule. I should add that I already have a meeting scheduled for Friday afternoon that cannot be moved, so if the deposition is going to be held on Friday, it would need to start by 10:00 a.m.

Please let me know Zinus' response to these issues at your earliest convenience.

Thanks,

Ken

Kenneth B. Wilson  
Perkins Coie LLP  
Four Embarcadero Center, Suite 2400  
San Francisco, CA 94111  
Phone: 415-344-7001  
Fax: 415-344-7201

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

**EXHIBIT 8**

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**From:** Wilson, Kenneth (Perkins Coie)  
**Sent:** Thursday, February 07, 2008 11:53 AM  
**To:** 'darien'  
**Subject:** RE: New Summary Judgment Motion

Darien:

On a related note, there are a substantial number of documents relating to Zinus' pending motion that still fall within the scope of Zinus' initial disclosures but still have not been produced. In particular, I am sure there are quite a number of communications between Zinus and Wal-Mart relating to the Mattress-in-a-Box product that have not yet been produced. Actually, I don't think Zinus produced any such communications prior to our cease and desist letter. You have referenced a Sales Plan, and communications relating to a Sales Plan, but none of those documents have been produced. I am sure there are also transactional documents that have not been produced, and that would constitute communications with Wal-Mart.

There are a number of other categories of documents that are directly relevant to your motion that have not been produced and that render the motion premature. For example, promotional materials and videos created regarding the product would tend to show whether Zinus provided directions to prospective customers. Any information regarding any Wal-Mart displays of Zinus product would relate to the subject matter of Zinus' motion. Any testing of the product showing how quickly it takes for the product to fully reexpand to its uncompressed state, or advertisements or communications with customers or Wal-Mart on the subject, would also be relevant. Indeed, any documents that relate to the topics addressed in Mr. Reeves declaration should be produced, and Dreamwell should have a chance to review and make arguments relating to those documents, before the Court can properly rule on Zinus's motion.

Please let me know if Zinus will be producing any of these documents in advance of Mr. Reeves deposition, and if so, what documents will be produced and when I can expect to receive them.

Thanks,

Ken

Kenneth B. Wilson  
Perkins Coie LLP  
Four Embarcadero Center, Suite 2400  
San Francisco, CA 94111  
Phone: 415-344-7001  
Fax: 415-344-7201



---

**From:** darien [mailto:darien@imperiumpw.com]  
**Sent:** Friday, January 18, 2008 2:25 PM  
**To:** Wilson, Kenneth (Perkins Coie)  
**Subject:** New Summary Judgment Motion

Ken,

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You asked for all of the documents listed in Zinus' initial Rule 26(a)(1) disclosures. Those documents are listed below.

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Regards,

Darien

Darien K. Wallace  
Imperium Patent Works  
P.O. Box 587  
Sunol, CA 94586  
Tel: (925) 550-5067

---

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**Sent:** Friday, January 18, 2008 12:12 AM  
**To:** darien  
**Subject:** New Summary Judgment Motion

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Please let me know Zinus' response to these issues at your earliest convenience.

Thanks,

Ken

Kenneth B. Wilson  
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**EXHIBIT 9**

Kenneth B. Wilson, Calif. Bar No. 130009  
KWilson@perkinscoie.com  
PERKINS COIE LLP  
Four Embarcadero Center, Suite 2400  
San Francisco, CA 94111-4131  
Telephone: 415.344.7000  
Facsimile: 415.344.7050

Attorneys for Defendant  
SIMMONS BEDDING COMPANY  
and Defendant and Counterclaimant DREAMWELL, LTD.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ZINUS, INC. a California Corporation,

Plaintiff,

v.

SIMMONS BEDDING COMPANY, a  
Delaware corporation, and DREAMWELL,  
LTD., a limited liability company of  
Nevada,

Defendants.

Case No. 07-CV-03012-PVT

**DREAMWELL'S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO  
ZINUS**

**AND RELATED COUNTERCLAIMS**

Pursuant to Federal Rule of Civil Procedure 34, defendant and counterclaimant Dreamwell, Ltd. ("Dreamwell") hereby requests that plaintiff and counterclaim defendant Zinus, Inc. ("Zinus") produce the following documents, electronically stored information and tangible things for inspection and copying by Dreamwell within 30 days of service of this request and in accordance with the Definitions and Instructions set forth below. Such documents, information and things shall be produced at the offices of Perkins Coie LLP, Four Embarcadero Center, Suite 2400, San Francisco, CA 94111.



**DEFINITIONS**

1  
2           1.       The terms “You,” and “Your” mean plaintiff Zinus, its present and former  
3 divisions, subsidiaries and related entities, and all present and former employees, officers,  
4 directors, agents, representatives, attorneys, or any other persons acting at its direction, under its  
5 control or on its behalf.

6           2.       The term “Mattress-in-a-Box” means any product that Zinus has in the past or  
7 currently designs, manufactures, packages, distributes, offers for sale, sells and/or imports under  
8 the name “Mattress-in-a-Box” or any variation thereof.

9           3.       The term “’142 Patent” means U.S. Patent No. RE 36,142, and any related U.S. or  
10 foreign patents or applications.

11           4.       The term “document” is used in the broadest sense of Rule 34 of the Federal Rules  
12 of Civil Procedure and encompasses all manner of recordation such as hard copy, carbon copy,  
13 photocopy, microfilm, microfiche and machine readable code and includes without limitation,  
14 letters, copies of letters, intra-corporate communications, minutes, bulletins, specifications,  
15 instructions, advertisements, literature, trademark registrations, work assignments, reports,  
16 memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets,  
17 contracts, memoranda of agreements, assignments, licenses, sublicenses, books of accounts,  
18 orders, invoices, statements, bills, vouchers, photographs, drawings, charts, catalogues, brochures,  
19 and other written materials of whatever kind known to you or in your possession or control.

20           5.       The term “communication” refers to every manner or means of disclosure or  
21 transfer or exchange of information whether orally or by document and whether face to face, by  
22 telephone, facsimile transmission, mail, personal delivery, electronic mail, computer  
23 transmission, or otherwise.

24           6.       The term “relating to” means referring to, relating to, pertaining to, consisting of,  
25 constituting, memorializing, confirming, containing, reflecting, or otherwise connected to.

26           7.       The term “person” refers to individuals, parties, associations, partnerships, firms,  
27 corporations, and other business organizations or entities whether formal or informal.  
28

**INSTRUCTIONS**

1  
2 1. These requests seek responses that are accurate as of the date they are given and  
3 are continuing so that any additional information responsive to these requests that you learn at  
4 any time shall timely be furnished to Dreamwell in supplemental responses.

5 2. In responding to these requests, please furnish all documents and things known or  
6 available to you, including those in the possession of your attorneys or other PERSONS directly  
7 or indirectly employed or retained by YOU, including but not limited to your agents, officers,  
8 employees, representatives, investigators or anyone else acting or purporting to act on your behalf  
9 or under your control.

10 3. To the extent that you withhold any document or communication in whole or in  
11 part because of a claim of privilege or immunity, please provide a privilege log setting forth the  
12 general nature of each document, communication, or portion thereof withheld, its subject matter,  
13 and any other information necessary to explain your claim of privilege or immunity and to allow  
14 a court to adjudicate the propriety of such claim.

15 4. If you cannot respond to any request in full, please respond to the fullest extent  
16 possible, explain why you cannot respond to the remainder, and describe the nature of the  
17 documents, communications or things you cannot provide.

18 5. If you object to any portion of a request, please respond to all portions of the  
19 request to which you do not object.

20 6. The words "and," "and/or," and "or" refer to both the conjunctive and disjunctive  
21 meaning. The word "any" shall mean "each and every" as well as "anyone."  
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**REQUEST FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:**

All documents that refer or relate to Dreamwell.

**REQUEST FOR PRODUCTION NO. 2:**

All documents that refer or relate to Simmons Bedding Company, or any other Simmons entity.

**REQUEST FOR PRODUCTION NO. 3:**

All documents that refer or relate to the '142 Patent.

**REQUEST FOR PRODUCTION NO. 4:**

All documents that refer or relate to Zinus' innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 5:**

All documents that refer or relate to any compressed or compressible innerspring mattress product designed, developed, manufactured, assembled, packaged, tested, offered for sale, sold, or otherwise distributed by Zinus.

**REQUEST FOR PRODUCTION NO. 6:**

All documents that refer or relate to the function of any compressed or compressible innerspring mattress product designed, developed, manufactured, assembled, packaged, tested, offered for sale, sold, or otherwise distributed by Zinus.

**REQUEST FOR PRODUCTION NO. 7:**

All documents that refer or relate to the design or development of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 8:**

Documents sufficient to identify each person involved in the design or development of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 9:**

All documents that refer or relate to research or development conducted relating to any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 10:**

Documents sufficient to identify each person involved in research or development conducted relating to any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 11:**

All documents that refer or relate to the conception of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 12:**

All documents that refer or relate to the manufacture of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 13:**

Documents sufficient to identify each person involved in the manufacture of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 14:**

All documents that refer or relate to the assembly of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 15:**

Documents sufficient to identify each person involved in the assembly of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 16:**

All documents that refer or relate to any quality control performed on any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 17:**

Documents sufficient to identify each person involved in any quality control performed on any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 18:**

All documents that refer or relate to the testing of any Zinus innerspring Mattress-in-a-Box product.



1 **REQUEST FOR PRODUCTION NO. 19:**

2 Documents sufficient to identify each person involved in the testing of any Zinus  
3 innerspring Mattress-in-a-Box product.

4 **REQUEST FOR PRODUCTION NO. 20:**

5 All documents that refer or relate to the packaging of any Zinus innerspring Mattress-in-a-  
6 Box product.

7 **REQUEST FOR PRODUCTION NO. 21:**

8 Document sufficient to identify each person involved in the packaging of any Zinus  
9 innerspring Mattress-in-a-Box product.

10 **REQUEST FOR PRODUCTION NO. 22:**

11 All documents that refer or relate to the conception, design or development of any process  
12 or method, whether or not implemented, of manufacturing any Zinus innerspring Mattress-in-a-  
13 Box product or of any step thereof.

14 **REQUEST FOR PRODUCTION NO. 23:**

15 All documents that refer or relate to research and development performed relating to any  
16 process or method, whether or not implemented, of manufacturing any Zinus innerspring  
17 Mattress-in-a-Box product or of any step thereof.

18 **REQUEST FOR PRODUCTION NO. 24:**

19 All documents that refer or relate to the conception, design or development of any process  
20 or method, whether or not implemented, of assembling any Zinus innerspring Mattress-in-a-Box  
21 product or of any step thereof.

22 **REQUEST FOR PRODUCTION NO. 25:**

23 All documents that refer or relate to research and development performed relating to any  
24 process or method, whether or not implemented, of assembling any Zinus innerspring Mattress-  
25 in-a-Box product or of any step thereof.

26 **REQUEST FOR PRODUCTION NO. 26:**

27 All documents that refer or relate to the conception, design or development of any process  
28

1 or method, whether or not implemented, of packaging any Zinus innerspring Mattress-in-a-Box  
2 product or of any step thereof.

3 **REQUEST FOR PRODUCTION NO. 27:**

4 All documents that refer or relate to research and development performed relating to any  
5 process or method, whether or not implemented, of packaging any Zinus innerspring Mattress-in-  
6 a-Box product or of any step thereof.

7 **REQUEST FOR PRODUCTION NO. 28:**

8 All documents that refer or relate to Zinus' Swirl Wrap process.

9 **REQUEST FOR PRODUCTION NO. 29:**

10 All documents that refer or relate to the conception, design or development of Zinus'  
11 Swirl Wrap process.

12 **REQUEST FOR PRODUCTION NO. 30:**

13 All documents that refer or relate to research and development relating in any way to  
14 Zinus' Swirl Wrap process.

15 **REQUEST FOR PRODUCTION NO. 31:**

16 All documents that constitute, refer or relate to any installation instructions, user  
17 instructions, or specification sheets for any Zinus Mattress-in-a-Box product.

18 **REQUEST FOR PRODUCTION NO. 32:**

19 All documents that constitute, refer or relate to the advertising, marketing or promotion of  
20 any Zinus Mattress-in-a-Box product, including but not limited to, all advertising material, press  
21 releases, product announcements, marketing and promotional material, business and sales plans,  
22 articles, documents and things relating to speeches, lectures or presentations, or promotional  
23 videos.

24 **REQUEST FOR PRODUCTION NO. 33:**

25 Documents sufficient to identify each person involved in the advertising, marketing or  
26 promotion of any Zinus Mattress-in-a-Box product, including but not limited to advertising  
27 brochures or promotional videos.

1 **REQUEST FOR PRODUCTION NO. 34:**

2 Any and all versions of any pages from Zinus' Web sites, including but not limited to  
3 pages from the zinus.com and zinusinternational.com domains, as well as any documents posted,  
4 displayed, or otherwise made available through such Web sites.

5 **REQUEST FOR PRODUCTION NO. 35:**

6 All documents that constitute, refer or relate to any video prepared by or on behalf of  
7 Zinus that relates in any way to its Mattress-in-a-Box product, including but not limited to any  
8 video showing the manufacturing process, and any video showing the unpackaging or use of the  
9 mattress.

10 **REQUEST FOR PRODUCTION NO. 36:**

11 All documents that constitute, refer or relate to any video prepared by or on behalf of  
12 anyone other than Zinus (including but not limited to Wal-Mart Stores, Inc.) that relates in any  
13 way to Zinus' Mattress-in-a-Box product, including but not limited to any video showing the  
14 manufacturing process, and any video showing the unpackaging or use of the mattress.

15 **REQUEST FOR PRODUCTION NO. 37:**

16 All documents that constitute, refer or relate to the development of any packaging  
17 designed or used with any Mattress-in-a-Box product, including but not limited to any carton  
18 designs.

19 **REQUEST FOR PRODUCTION NO. 38:**

20 All contracts or agreements between Zinus and any entity relating to any Mattress-in-a-  
21 Box product, including but not limited to, indemnification, research, development,  
22 manufacturing, collaboration or license agreements.

23 **REQUEST FOR PRODUCTION NO. 39:**

24 All documents that constitute, refer or relate to any offer for sale of any Zinus innerspring  
25 Mattress-in-a-Box product.  
26  
27  
28

**REQUEST FOR PRODUCTION NO. 40:**

Document sufficient to identify each person involved in any offer for sale of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 41:**

All documents that constitute, refer or relate to any importation of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 42:**

Documents sufficient to identify each person involved in any importation of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 43:**

All documents that constitute, refer or relate to any delivery or shipment of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 44:**

Documents sufficient to identify each person involved in any delivery or shipment of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 45:**

All documents that refer or relate to any sale or other distribution of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 46:**

Documents sufficient to identify each person involved in any sale or other distribution of any Zinus innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 47:**

All documents that refer or relate to Wal-Mart Stores, Inc. or any affiliate of Wal-Mart Stores, Inc (hereinafter referred to as "Wal-Mart").

**REQUEST FOR PRODUCTION NO. 48:**

All documents that refer or relate to walmart.com or any affiliate of walmart.com.



1 **REQUEST FOR PRODUCTION NO. 49:**

2 All documents that refer or relate to Wal-Mart Canada or any affiliate of Wal-Mart  
3 Canada.com.

4 **REQUEST FOR PRODUCTION NO. 50:**

5 All documents that refer or relate to any actual or prospective customer for the Zinus  
6 innerspring Mattress-in-a-Box product.

7 **REQUEST FOR PRODUCTION NO. 51:**

8 All documents that refer or relate to any instance in which Zinus removed a compressed  
9 innerspring Mattress in a Box mattress and surrounding wrapper from a box.

10 **REQUEST FOR PRODUCTION NO. 52:**

11 All documents that refer or relate to any instance in which Zinus removed a compressed  
12 innerspring Mattress-in-a-Box mattress and wrapper from its surrounding duffel bag or fabric roll.

13 **REQUEST FOR PRODUCTION NO. 53:**

14 All documents that refer or relate to any instance in which Zinus removed a compressed  
15 innerspring Mattress-in-a-Box mattress from its surrounding wrapper.

16 **REQUEST FOR PRODUCTION NO. 54:**

17 All documents that refer or relate to any instance in which Zinus allowed a compressed  
18 innerspring Mattress-in-a-Box mattress to return to its uncompressed state after removing it from  
19 its surrounding plastic wrapper.

20 **REQUEST FOR PRODUCTION NO. 55:**

21 All documents that refer or relate to any instance in which any person other than Zinus  
22 removed a compressed innerspring Mattress in a Box mattress and surrounding wrapper from a  
23 box.

24 **REQUEST FOR PRODUCTION NO. 56:**

25 All documents that refer or relate to any instance in which any person other than Zinus  
26 removed a compressed innerspring Mattress-in-a-Box mattress and wrapper from its surrounding  
27 duffel bag or fabric roll.

28

1 **REQUEST FOR PRODUCTION NO. 57:**

2 All documents that refer or relate to any instance in which any person other than Zinus  
3 removed a compressed innerspring Mattress-in-a-Box mattress from its surrounding wrapper.

4 **REQUEST FOR PRODUCTION NO. 58:**

5 All documents that refer or relate to any instance in which any person other than Zinus  
6 allowed a compressed innerspring Mattress-in-a-Box mattress to return to its uncompressed state  
7 after removing it from its surrounding wrapper.

8 **REQUEST FOR PRODUCTION NO. 59:**

9 All documents that refer or relate to the manner in which or rate at which any Zinus  
10 innerspring Mattress-in-a-Box mattress returns to its uncompressed state.

11 **REQUEST FOR PRODUCTION NO. 60:**

12 All documents that constitute, refer or relate to any communications between Zinus and  
13 any other party relating to how to remove the innerspring Mattress-in-a-Box mattress from its  
14 surrounding wrapper and/or allow the mattress to return to its uncompressed state.

15 **REQUEST FOR PRODUCTION NO. 61:**

16 All documents that constitute, refer or relate to communications between Zinus and Wal-  
17 Mart.

18 **REQUEST FOR PRODUCTION NO. 62:**

19 All documents that constitute, refer or relate to any sales plan between Zinus and Wal-  
20 Mart, as referenced in Zinus' Third Amended Complaint.

21 **REQUEST FOR PRODUCTION NO. 63:**

22 All documents that constitute, refer or relate to any supply agreement between Zinus and  
23 Wal-Mart.

24 **REQUEST FOR PRODUCTION NO. 64:**

25 All documents that constitute, refer or relate to communications between or among Zinus  
26 personnel or representatives that refer or relate to Wal-Mart.

**REQUEST FOR PRODUCTION NO. 65:**

All documents that constitute, refer or relate to communications between Zinus and any third party that refer or relate to Wal-Mart.

**REQUEST FOR PRODUCTION NO. 66:**

All documents that constitute, refer or relate to communications between Zinus and Wal-Mart that relate to Zinus' innerspring Mattress-in-a-Box product.

**REQUEST FOR PRODUCTION NO. 67:**

All documents that constitute, refer or relate to communications between Zinus and Wal-Mart that relate to Dreamwell, Simmons Bedding Company, or any other Simmons entity.

**REQUEST FOR PRODUCTION NO. 68:**

All documents that constitute, refer or relate to communications between Zinus and Wal-Mart that relate to the '142 Patent.

**REQUEST FOR PRODUCTION NO. 69:**

All documents that constitute, refer or relate to communications between Zinus and Wal-Mart that relate to the above-captioned litigation..

**REQUEST FOR PRODUCTION NO. 70:**

All documents that constitute, refer or relate to communications between or among Zinus personnel or representatives that relate to Dreamwell, Simmons Bedding Company, or any other Simmons entity.

**REQUEST FOR PRODUCTION NO. 71:**

All documents that constitute, refer or relate to communications between or among Zinus personnel or representatives that relate to the '142 Patent.

**REQUEST FOR PRODUCTION NO. 72:**

All documents that constitute, refer or relate to communications between or among Zinus personnel or representatives that relate to the above-captioned litigation.

**REQUEST FOR PRODUCTION NO. 73:**

All documents that constitute, refer or relate to communications between Zinus and any

1 third party, including any actual or prospective customers or end users of Zinus' products, that  
2 relate to Zinus' innerspring Mattress-in-a-Box product.

3 **REQUEST FOR PRODUCTION NO. 74:**

4 All documents that constitute, refer or relate to communications between Zinus and any  
5 third party that relate to Dreamwell, Simmons Bedding Company, or any other Simmons entity.

6 **REQUEST FOR PRODUCTION NO. 75:**

7 All documents that constitute, refer or relate to communications between Zinus and any  
8 third party that relate to the '142 Patent.

9 **REQUEST FOR PRODUCTION NO. 76:**

10 All documents that constitute, refer or relate to communications between Zinus and any  
11 third party that relate to the above-captioned litigation.

12 **REQUEST FOR PRODUCTION NO. 77:**

13 All documents that constitute, refer or relate to any patent application filed by or on behalf  
14 of Zinus, in the United States or elsewhere, relating in any way to Zinus' Mattress-in-a-Box  
15 product or any other compressible innerspring mattress product, including but not limited to any  
16 communications with any patent office or other government body relating to such application.

17 **REQUEST FOR PRODUCTION NO. 78:**

18 All documents that constitute, refer or relate to communications or correspondence  
19 between Zinus and its direct or downstream customers, purchasers, manufacturers, importers,  
20 and/or distributors relating to any Zinus innerspring Mattress-in-a-Box product.

21 **REQUEST FOR PRODUCTION NO. 79:**

22 All documents that constitute, refer or relate to any communications between Zinus and its  
23 direct or downstream customers, purchasers, manufacturers, importers, and/or distributors relating  
24 in any way to the unpackaging and/or use any Zinus innerspring Mattress-in-a-Box product.

25 **REQUEST FOR PRODUCTION NO. 80:**

26 All documents that constitute, refer or relate to any directions or instructions provided by  
27 Zinus to its direct or downstream customers, purchasers, manufacturers, importers, and/or  
28



1 distributors relating in any way to the unpackaging and/or use any Zinus innerspring Mattress-in-  
2 a-Box product.

3 **REQUEST FOR PRODUCTION NO. 81:**

4 All documents that constitute, refer or relate to any offers, purchase orders, agreements,  
5 understandings, or other communications between Zinus and its direct or downstream customers,  
6 purchasers, manufacturers, importers, and/or distributors that refer to, relate to, or disclaim  
7 indemnification for infringement or violation of law.

8 **REQUEST FOR PRODUCTION NO. 82:**

9 Documents sufficient to identify the general corporate structure and organization of Zinus  
10 and the officers and employees of Zinus, including but not limited to any organizational charts.

11 **REQUEST FOR PRODUCTION NO. 83:**

12 All documents that refer or relate to any and/or all business relationships, negotiations, or  
13 activities between Zinus and other entities relating to any Zinus innerspring Mattress-in-a-Box  
14 product.

15 **REQUEST FOR PRODUCTION NO. 84:**

16 All documents that constitute, refer or relate to any document retention policies or  
17 practices.

18 **REQUEST FOR PRODUCTION NO. 85:**

19 All documents that constitute, refer or relate to memoranda, meeting notes, board minutes  
20 and presentations relating to any Zinus innerspring Mattress-in-a-Box product.

21 **REQUEST FOR PRODUCTION NO. 86:**

22 All documents that constitute, refer or relate to any Zinus financial statements, including  
23 but not limited to balance sheets, income statements, and cash flow reports.

24 **REQUEST FOR PRODUCTION NO. 87:**

25 All documents or other tangible items of any nature or sort that were identified or  
26 referenced by Zinus in its Initial Disclosures.

1 **REQUEST FOR PRODUCTION NO. 88:**

2 All documents or other tangible items of any nature or sort requested to be identified in  
3 the Interrogatories served concurrently with these Requests for Production of Documents.  
4

5 Dated: February 11, 2008

6 **PERKINS COIE LLP**

7 By Kenneth B. Wilson  
8 Kenneth B. Wilson

9 Attorneys for Defendant  
10 SIMMONS BEDDING COMPANY  
11 and Defendant and Counterclaimant DREAMWELL,  
12 LTD.  
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**EXHIBIT 10**

1 Kenneth B. Wilson, Calif. Bar No. 130009  
KWilson@perkinscoie.com  
2 PERKINS COIE LLP  
Four Embarcadero Center, Suite 2400  
3 San Francisco, CA 94111-4131  
Telephone: 415.344.7000  
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5 Attorneys for Defendant  
SIMMONS BEDDING COMPANY  
6 and Defendant and Counterclaimant DREAMWELL, LTD.

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 ZINUS, INC. a California Corporation,  
13 Plaintiff,

14 v.

15 SIMMONS BEDDING COMPANY, a  
Delaware corporation, and DREAMWELL,  
16 LTD., a limited liability company of  
Nevada,

17 Defendants.  
18

19 AND RELATED COUNTERCLAIMS  
20

Case No. 07-CV-03012-PVT

**DREAMWELL'S FIRST SET OF  
INTERROGATORIES TO ZINUS**

21 Pursuant to Federal Rule of Civil Procedure 33, defendant and counterclaimant  
22 Dreamwell, Ltd. ("Dreamwell") hereby requests that plaintiff and counterclaim defendant Zinus,  
23 Ltd. ("Zinus") answer the following interrogatories under oath within 30 days of service of this  
24 request and in accordance with the Definitions and Instructions set forth below.  
25  
26  
27  
28



**DEFINITIONS**

1  
2           1.       The terms “You,” and “Your” mean plaintiff Zinus, its present and former  
3 divisions, subsidiaries and related entities, and all present and former employees, officers,  
4 directors, agents, representatives, attorneys, or any other persons acting at its direction, under its  
5 control or on its behalf.

6           2.       The term “Mattress-in-a-Box” means any product that Zinus has in the past or  
7 currently designs, manufactures, packages, distributes, offers for sale, sells and/or imports under  
8 the name “Mattress-in-a-Box” or any variation thereof.

9           3.       The term “‘142 Patent” means U.S. Patent No. RE 36,142, and any related U.S. or  
10 foreign patents or applications.

11           4.       The term “document” is used in the broadest sense of Rule 34 of the Federal Rules  
12 of Civil Procedure and encompasses all manner of recordation such as hard copy, carbon copy,  
13 photocopy, microfilm, microfiche and machine readable code and includes without limitation,  
14 letters, copies of letters, intra-corporate communications, minutes, bulletins, specifications,  
15 instructions, advertisements, literature, trademarks registrations, work assignments, reports,  
16 memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets,  
17 contracts, memoranda of agreements, assignments, licenses, sublicenses, books of accounts,  
18 orders, invoices, statements, bills, vouchers, photographs, drawings, charts, catalogues, brochures,  
19 and other written materials of whatever kind known to you or in your possession or control.

20           6.       The term “communication” refers to every manner or means of disclosure or  
21 transfer or exchange of information whether orally or by document and whether face to face, by  
22 telephone, facsimile transmission, mail, personal delivery, electronic mail, computer  
23 transmission, or otherwise.

24           7.       The term “relating to” means referring to, relating to, pertaining to, consisting of,  
25 constituting, memorializing, confirming, containing, reflecting, or otherwise connected to.

26           8.       The term “person” refers to individuals, parties, associations, partnerships, firms,  
27 corporations, and other business organizations or entities whether formal or informal.

28           9.       Unless otherwise indicated by the context, the term “identify” means:

a. when used in connection with a document, to furnish a brief description of the subject matter of the document, its title or designation, its date of preparation and distribution, the name and address of the author and sender, the name and address of the person, if any, to whom it was directed or to whom copies or similar documents were directed the location thereof; and the present custodian;

b. when used in connection with a person, to furnish a statement of the full name, occupation, job title, business or function thereof, last known business and home address and telephone number, place and date of incorporation, principal and other place(s) of business, nature of business, all officers and other persons having knowledge of the matter with respect to the business entity, executive offices of the company, its relation to you or to your goods or products or other things;

c. when used in connection with things, including and not limited to products, devices, goods or physical things, to furnish a complete description of the thing, including its common designation, its composition, its physical description, product type, any other distinguishing characteristics; the catalog, SKU, stock or other identifying number; and the trademark, name, type, / grade, and any other designation customarily used to designate the item and to distinguish it from others made or sold by the same or a different producer or vendor.

## INSTRUCTIONS

1. These interrogatories seek responses that are accurate as of the date they are given, and are continuing so that any additional information responsive to these interrogatories that you learn at any time shall be timely furnished to Dreamwell in supplemental responses.

2. In responding to these interrogatories, please furnish all information known or available to you, including information in the possession of your attorneys, other persons directly or indirectly employed or retained by you, including but not limited to, your agents, officers, employees, representatives, investigators or anyone else acting or purporting to act on your behalf of or under your control.



1 uncontrolled or naked license to Simmons Bedding Company by failing to exercise any quality  
2 control over Simmons Bedding Company and in doing so has abandoned its mark 'POCKET  
3 COIL' and is estopped from asserting its rights as to the 'POCKET COIL' mark."

4 **INTERROGATORY NO. 5:**

5 Describe in detail and identify all facts and documents supporting the basis for Zinus'  
6 allegation in Paragraph 36 of Zinus' Reply to Dreamwell's Counterclaims that "Dreamwell's  
7 counterclaim for trademark infringement is barred because Dreamwell committed inequitable  
8 conduct in connection with the trademark renewal of the 'POCKET COIL' mark" that renders the  
9 registration of the mark "invalid and subject to cancellation."

10 **INTERROGATORY NO. 6:**

11 Describe in detail and identify all facts and documents supporting the basis for Zinus'  
12 allegation in Paragraph 39 of Zinus' Reply to Dreamwell's Counterclaims that Dreamwell's  
13 counterclaim for unfair business practices is barred because the manner in which Dreamwell  
14 asserts California Business & Profession Code § 17200 is preempted by federal law.

15 **INTERROGATORY NO. 7:**

16 Describe in detail the facts and circumstances surrounding Zinus' first knowledge of the  
17 '142 Patent, including but not limited to the person(s) who first learned of the patent, the date of  
18 first knowledge, and any documents relating to such circumstances.

19 **INTERROGATORY NO. 8:**

20 Identify each specific item of confidential information that Zinus contends defendant  
21 Simmons Bedding Company acquired at the Zinus factory in China, including the person who  
22 disclosed such information and the form in which the information was disclosed (document, oral,  
23 etc.).

24 **INTERROGATORY NO. 9:**

25 Describe in detail the factual basis for Zinus' contention that defendants have disclosed  
26 and/or used Zinus confidential information, including the specific item or items of confidential  
27 information that Zinus claims defendants disclosed and/or used, who disclosed and/or used the  
28




1 information, when the information was disclosed and/or used, and how the information was  
2 disclosed and/or used.

3 **INTERROGATORY NO. 10:**

4 Specify and quantify any damages that Zinus believes it has sustained as a result of  
5 defendants' alleged misconduct, and identify any documents that Zinus believes support such a  
6 contention.

7  
8 Dated: February 11, 2008

9 **PERKINS COIE LLP**

10 By   
11 Kenneth B. Wilson

12 Attorneys for Defendant  
13 SIMMONS BEDDING COMPANY  
14 and Defendant and Counterclaimant DREAMWELL,  
15 LTD.  
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